

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K04-S-102**

**LARRY AND LINDA BROWN**

**APPELLANTS**

**V.**

**ORDER NO. K-19447**

**HARDIN COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

The Kentucky Board of Tax Appeals delegated authority to a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provision of KRS 13B.110. The Appellant filed exceptions to the recommended order.

The Board has reviewed the record, the recommended order and the exceptions

The Kentucky Board of Tax Appeals conducted a hearing in this matter on July 14, 2005 in Elizabethtown, Kentucky and made the following findings of fact, conclusions of law and recommended disposition.

**FINDINGS OF FACT**

This assessment appeal is for real property located at 411 S. Maple Street, Elizabethtown, in Hardin County. The Hardin County Property Valuation Administrator assessed the subject property at \$178,600.00. The taxpayer or Appellant values the property at \$135,000.00. The Hardin County Board of Assessment Appeals valued the property at \$178,600.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal:

The Appellant, represented by Mrs. Brown offered comparable sales of residences to her

ten year old property (2,036 square feet, self-described “ranch house”, garage in basement area). Ms. Brown did not bring an appraisal or an appraiser regarding her property to the hearing. Mrs. Brown discusses 623 Debra Lane as a similarly designed home she was hoping to buy. Ms. Brown provided an exhibit with documentations of the comparable homes along with sale prices of other properties. Mrs. Brown highlighted many of the homes in the Debra Lane area. Other exhibits included pictures of her comparable homes, real estate advertisements, and real estate transfer prices of other homes. There was a complete review of the hearing officer’s folder with its documents and entries. This was reviewed to the satisfaction of the Appellant.

The PVA represented by Mr. Kenneth Howard of the Hardin County Attorney’s Office. In his cross-examination, Mrs. Brown agreed the subject property’s lot was purchased in 2003 for \$20,500.00. Mr. Howard noted the construction contract price of \$109,000.00. Mrs. Brown notes there have been no improvements to the house since its original construction. The cross-examination discussed landscaping at a discounted price and the driveway was not included in the construction contract. Mr. Howard noted a lending institution appraisal date of April 18, 2001 of \$180,000.00, but Mrs. Brown said the appraisal has “gotten a slight correction”. Mr. Howard also noted an insurance certificate on Mrs. Brown’s house for a dwelling of \$146,000.00 and \$15,610.00 for other structures effective through July 2004.

The Hardin PVA provided the testimony of Mr. Rick Baumgardner, owner and president of Baumgardner & Associates, as a certified appraiser with the Commonwealth of Kentucky. A report of the appraisal was provided to the Hearing Officer as exhibit five. Mr. Baumgardner testified his appraisal of the 411 South Maple was \$205,000.00 for the date of April 29, 2005 having performed an inspection of the property and using two applicable approaches, a cost

approach and a approach using sales comparables. Mrs. Brown noted one of the houses Mr. Baumgardner mentioned was not a ranch house.

Ms. Teri Bennett, Hardin County PVA testified an adjustment was made to the Mr. Baumgardner's appraisal with more complete and correct information regarding square footage. Mrs. Brown again noted her house has received no improvements, but Mr. Howard noted depreciation was factored in Mr. Baumgardner's appraisal.

It is the finding of this hearing that the Appellant did not sustain her burden of proof regarding her challenge to the final order of the Hardin County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of the hearing officer, Bill Beam, Jr., the fair cash value of the property in question as of January 1, 2004 is \$178,600.00.

### **CONCLUSIONS OF LAW**

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Hardin County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Hardin County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that "all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale."

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Hardin County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officer concludes that the fair cash value of the subject property located at 411 South Maple Street, Elizabethtown be assessed at \$178,600.00.

### **RECOMMENDED ORDER**

It is recommended that the July 14, 2004 final ruling of the Hardin County Board of Assessment Appeals be upheld and the real property be assessed at a fair cash value of \$178,600.00 as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

**FINAL ORDER**

The Kentucky Board of Tax Appeals has considered the record and the exceptions filed and accepts the recommended order of the hearing officer, and adopt it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2nd 866 (1998).

The July 14, 2004 final ruling of the Hardin County Board of Assessment Appeals is upheld and the real property is to be assessed at the fair cash value of \$178,600.00 as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER  
AND MAILING: January 18, 2006**

**FULL BOARD CONCURRING.  
KENTUCKY BOARD OF TAX APPEALS**

**NANCY MITCHELL  
CHAIR**

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